

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

The Provision of Interstate and
International Interexchange
Telecommunications Service via the
"Internet" by Non-Tariffed, Uncertified
Entities

RM-8775

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Federal Communications Commission
Office of Secretary

To: The Commission

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REPLY COMMENTS OF THE INTERACTIVE SERVICES ASSOCIATION

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REPLY COMMENTS OF THE INTERACTIVE SERVICES ASSOCIATION

The Interactive Services Association (ISA), by its attorneys, hereby submits these reply comments in the above-referenced proceeding. The ISA, formed in 1981, is the leading trade association devoted exclusively to promoting consumer interactive services worldwide. The ISA has approximately 350 members from a variety of industries, including online, Internet access, advertising, cable television, computer hardware and software, consumer electronics, financial services, magazine and newspaper publishing, and telephony.

On March 4, 1996, America's Carriers Telecommunications Association (ACTA) filed a petition for declaratory ruling, special relief, and institution of a rulemaking proceeding regarding Internet telephony. The essence of ACTA's petition was that the emergence of Internet telephony has created an asymmetry in regulatory treatment between traditional interexchange telephony (which is regulated under the common carrier provisions of the Communications Act) and Internet telephony (which is not).

The vast majority of commenters urged dismissal of the ACTA petition in its entirety. These commenters argued exhaustively that (1) the FCC lacks jurisdiction over software

manufacturers; (2) regulation of the Internet is contrary to Congressional intent and public policy; and (3) ACTA's allegations of the harms from unregulated Internet telephony are misleading, self-serving, and in some instances, absurd.^{1/} The ISA supports these comments.

One issue has emerged from the comments that the ISA wishes to address in this reply. A number of parties requested that the Commission address the disparity between the price charged consumers to make a long-distance call via the Internet and the price charged to make a call in the more traditional way. These commenters asserted that the price disparity between Internet and regular calls results from the so-called ESP exemption -- an FCC rule under which enhanced service providers do not pay access charges that the providers of traditional long-distance service must pay.^{2/} In an effort to equalize the prices of Internet and traditional calls,

^{1/} See Joint Opposition of Computer Professionals for Social Responsibility and The Benton Foundation at 20; Opposition of CompuServe at 2; Comments of The Commercial Internet eXchange Association at 12; Comments in Opposition of Center for Democracy and Technology at 9; Opposition of the Business Software Alliance at 11; Comments of BBN Corporation at 9; Comments of The Consumer Project on Technology at 1; Comments of FARNET at 5; Comments of the Information Technology Association of America at 12; Opposition of the Information Technology Industry Council at 10; Opposition of Microsoft Corporation at 8; Comments of the students of the Spring 1996 seminar on Telecommunications Modeling and Policy Analysis at the Massachusetts Institute of Technology ("MIT Group") at 20; Comments of Millin Publishing Group at 7; Joint Opposition of Netscape Communication Corporation, Voxware, Inc., and Insoft, Inc. at 37; Initial comments of the New Media Coalition for Marketplace Solutions at 17; Opposition of the Software Publishers Association at 3; Comment of Steven L. Greenberg at 10; Joint Comments of Third Planet Publishing Inc. and Freetel Communications, Inc. at 10; Joint Opposition of Vocaltec Ltd. and Quarterdeck Corporation at 29; Opposition of the VON Coalition at 19.

^{2/} Enhanced service providers are treated as end users under the access charge rules. 47 C.F.R. § 69.2(m). See *MTS and WATS Market Structure, Memorandum Opinion and Order*, 97 F.C.C.2d 682, 715 (1983); *Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order*, 3 FCC Rcd 2631, 2633 (1988); *Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order*, 6 FCC Rcd 4524, 4535 (1991).

these parties urged the Commission to institute a new rulemaking to restructure access charges and require enhanced service providers to pay them.^{3/}

This effort must be rejected. The FCC may not require enhanced service providers to pay access charges for several reasons. First, requiring enhanced service providers to pay access charges is contrary to the Telecommunications Act of 1996 (the "1996 Act"). Section 254(d) of the 1996 Act permits the FCC to levy a surcharge to support universal service only on those who provide telecommunications service.^{4/} A number of access charge components represent implicit or explicit universal service surcharges.^{5/} The FCC cannot require enhanced service providers to pay these universal service surcharges, because enhanced service providers, by definition, do not provide telecommunications service.^{6/}

Second, requiring enhanced service providers to pay access charges in order to make it more expensive to provide telephone calling capability via the Internet is a remedy that is grossly mismatched to the purported problem. The overwhelming majority of enhanced service providers do not offer a service that allows consumers to make telephone calls over the Internet.

^{3/} See Comments of AT&T Corp. at 6-7; Comments of LDDS Worldcom at 15; Comments of the National Telephone Cooperative Association at 4; Comments of Pacific Bell and Nevada Bell at 16; Comments of Southwestern Bell Telephone Company at 8; Comments of the Telecommunications Resellers Association at 7; Comments of U S West, Inc. at 2-3; Comments of the United States Telephone Association at 3.

^{4/} 47 U.S.C. § 254(d).

^{5/} See Common Carrier Bureau, *Preparation for Addressing Universal Service Issues: A Review of Current Interstate Support Mechanisms* (Feb. 23, 1996).

^{6/} Enhanced service providers are obviously not telecommunications carriers to the extent that they "employ computer processing applications that . . . provide the subscriber additional, different, or restructured information." See 47 C.F.R. § 64.702(a). The ISA has explained elsewhere why Internet access service providers and online service providers are not telecommunications carriers. See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Comments of the ISA at 5-9 (April 12, 1996).

For example, an interstate voice mail service provided over the regular telephone network is an enhanced service.^{7/} Yet that service has no connection with the Internet. Even the vast majority of Internet-related enhanced services, such as news retrieval, stock quotation services, and the like, have nothing to do with Internet telephony. As a result, requiring enhanced service providers to pay access charges on the theory that doing so is necessary to equalize the pricing of Internet telephony services would be arbitrary and capricious.

Third, requiring enhanced service providers to pay access charges will not remedy the discrepancy in price between Internet phone calls and traditional calls. Comments filed by the MIT Group show that while it is less costly to provide long distance calling over the Internet than via traditional means, access charges produce only 23 percent of the cost savings.^{8/} The remainder of the savings comes from efficiencies such as (1) the increased intelligence in customer premises equipment (computers vs. telephones); (2) the use of packet switching instead of circuit switching; and (3) the use of high-capacity lines for the Internet backbone.^{9/}

Fourth, it bears repeating that requiring enhanced service providers to pay access charges in order to place an additional burden on Internet telephony runs directly counter to the policies embodied in the 1996 Act. Congress could not have made more clear its policy "to preserve

^{7/} *Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C.2d 384, 421 (1980).

^{8/} Comments of MIT Group at 8,13,14. See also Comments of Consumer Project on Technology at 3 (cost savings "is largely due to the more efficient nature of Internet Communications").

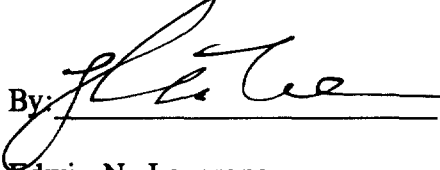
^{9/} These results illustrate why the emergence of Internet telephony serves the public interest. Internet telephony and switched voice telephony are different products. They involve tradeoffs in price and quality that only the public is qualified to evaluate.

the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."^{10/}

Finally, the question of whether the FCC should change its access charge policy has no relevance to the present proceeding. Those who believe the FCC should require enhanced service providers to pay access charges will be free to make their case when the Commission issues its notice initiating a new access charge reform rulemaking.^{11/} The ISA encourages the Commission to proceed expeditiously with access charge reform. The current system of subsidy-laden access charges remains a major obstacle to achieving a competitive marketplace in telephone services.

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^{10/} See 47 U.S.C. § 230(b)(2).

^{11/} The Commission stated in April that it intends to issue a new notice proposing ways to reform access charges "in the very near future." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, at ¶ 165 (April 19, 1996).

CERTIFICATE OF SERVICE

I, Carol Nyhof, do hereby certify that true and correct copies of the foregoing Reply Comments of the Interactive Services Association were served by first-class U.S. Mail, postage prepaid, or by hand (*), this 10th day of June, 1996, on the following:

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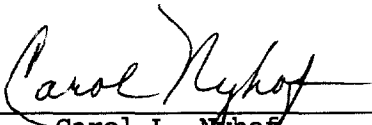
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